

**DOCKETED**

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<b>Project Title:</b>	2022 HERS Provider Applications for the 2022 Building Energy Efficiency Standards
<b>TN #:</b>	249122
<b>Document Title:</b>	Response Letter to Golden State Registry's Application for Confidentiality Jan 27 & 30, 2023
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March 14, 2023

**Via Email**

Jonathan Johnson  
Golden State Registry  
430 Villa Point Drive  
Newport Beach, California 92660  
[jon@gsregistry.org](mailto:jon@gsregistry.org)

**Application for Confidential Designation: HERS Provider Application  
Docket Number 22-HERS-01**

Dear Jonathan Johnson:

The California Energy Commission (CEC) received Golden State Registry's applications for confidential designation docketed January 27, 2023, [TN 248575] and January 30, 2023 [TN 248611] covering the following data:

Application TN 248575:

- Exhibit A2 Provider Applicant Ownership and Affiliations
- Exhibit B4 Requirements in Section 1673-Response
- Exhibit B5 Quality Assurance Compliance
- Exhibit B6 Golden State Registry Rater Agreement
- Exhibit B7 Quality Assurance Team Information
- Exhibit B8 Application Plan and Timeline

Application TN 248611:

- Exhibit C1 GSR Training Program Details
- Exhibit C2a GSR Training Course 1-5
- Exhibit C2b GSR Training Course 6-12
- Exhibit C2c GSR Training Course 13-19
- Exhibit C3 Rater Test Questions
- Exhibit C4 2022 GSR Software Training Manual
- Exhibit D1 Explanation of Fulfillment of Data Registry Requirements
- Exhibit E1 CEC Checklist for Application with GSR Replies
- Exhibit GSR Filing Documents Outline

In each application, Golden State Registry requests that the above-referenced documents be kept confidential for a period of 10 years or the same period that has been approved for other Home Energy Registry System Providers. Golden State Registry notes the documents are part of their HERS Provider application and contain proprietary information and trade secrets. The Provider Applicant

Ownership and Affiliations (Exhibit A2) contains personal and private information on the company owners including home addresses and phone numbers. The applicant notes that information for which confidential designation is sought is maintained as confidential by the applicant and has only been disclosed to Golden State Registry staff and certified HERS Raters or quality assurance personnel.

### **Confidentiality Claims**

#### Proprietary Business Information and Trade Secrets

An application for confidential designation shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), “. . . if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential.” The executive director’s determination made in response to an application for confidential designation is subject to a reasonableness standard. It is the applicant’s burden to make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines “trade secret” as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

## Personnel Information

Government Code section 7927.700 allows an agency to withhold personnel, medical, or similar files the disclosure of which would constitute an unwarranted invasion of privacy.

## Discussion

### **Application TN 248575:**

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) for the exhibits B5, B4, A2, B8, B7, and B6 by stating:

- 1) *The specific nature of the advantage* – Golden State Registry has heavily invested in developing its HERS Provider application and associated training materials.
- 2) *How the advantage would be lost* – If the information were to be made public others could become a HERS Provider without investing a similar amount of time and money.
- 3) *The value of the information to the applicant* – No specific dollar amount but the information is required to become a HERS Provider.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information can only be accessed by Golden State Registry employees, Raters, or QA personnel.

Golden State Registry has made a reasonable claim that exhibits B4, B5, B6, and B8 are exempt from disclosure as business proprietary or trade secrets.

The materials are confidential for a period of six years, or two additional code cycles. This period is appropriate because it ensures that Golden State Registry's provider application and testing and educational materials will be confidential while in use. After two additional code cycles, the risk of harm from these documents being publicly available is diminished since Golden State Registry will have submitted two new applications to be certified as a HERS provider and refined or altered their testing/education material.

Confidentiality is denied for exhibit B7 because Golden State Registry has not made a reasonable claim that this exhibit contains trade secrets. The information in exhibit B7 consists of resumes of Golden State Registry employees.

Exhibit A2 contains personal information such as the home addresses and telephone numbers of the owners of Golden State Registry. Exhibit A2 is granted confidentiality under Government Code section 7927.700 as personnel information, the disclosure of which would constitute an unwarranted invasion of privacy.

**Application TN 248611:**

The application addresses the four elements in California Code of Regulations, title 20, section 2505(a)(1)(D) for exhibits C1, C2a, C2b, C2c, C3, C4, D1, E1 and GSR Filing Documents Online by stating:

- 1) *The specific nature of the advantage* – Golden State Registry has heavily invested in developing its HERS Provider application and associated training materials.
- 2) *How the advantage would be lost* – If the information were to be made public others could become a HERS Provider without investing a similar amount of time and money.
- 3) *The value of the information to the applicant* – No specific dollar amount but the information is required to become a HERS Provider.
- 4) *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information can only be accessed by Golden State Registry employees, raters, or quality assurance personnel.

Golden State Registry has made a reasonable claim that exhibits C1, C2a, C2b, C2c, C3, C4, D1, E1 and GSR Filing Documents Online are exempt from disclosure as business proprietary or trade secrets.

The materials are confidential for a period of six years, or two additional code cycles. This period is appropriate because it ensures that Golden State Registry's provider application and testing and educational materials will be confidential while in use. After two additional code cycles, the risk of harm from these documents being publicly available is diminished since Golden State Registry will have submitted two new applications to be certified as a HERS provider and refined or altered their testing/education material.

**Executive Director's Determination**

For the reasons stated, confidentiality is approved for exhibits A2, B5, B4, B8, B6, C1, C2a, C2b, C2c, C3, C4, D1, E1 and GSR Filing Documents Online, referenced above, for six years or a period of two additional code cycles.

For the reasons stated, confidentiality is denied for exhibit B7.

You may request that the CEC determine the confidentiality of records for which the executive director denied confidential designation. You have 14 days to request that the CEC determine the confidentiality of the record. If you make such a request, the CEC will conduct a proceeding pursuant to the provisions in the California Code of Regulations, title 20, section 2508.

Be advised that under the California Code of Regulations, title 20, section 2506,

one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy records is issued by the CEC's chief counsel. Under the California Code of Regulations, title 20, section 2507, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set in the California Code of Regulations, title 20, sections 2506-2507.

If you have questions, please email [confidentialityapplication@energy.ca.gov](mailto:confidentialityapplication@energy.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan  
Executive Director